

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

VANCE WILLIAMS,)	
)	No. CV-11-0014-CI
Plaintiff,)	
)	ORDER DENYING PLAINTIFF'S
v.)	MOTION FOR SUMMARY JUDGMENT
)	AND GRANTING DEFENDANT'S
MICHAEL J. ASTRUE, Commissioner)	MOTION FOR SUMMARY JUDGMENT
of Social Security,)	
)	
Defendant.)	

BEFORE THE COURT are cross-Motions for Summary Judgment. ECF No. 12, 14. Attorney Lora Lee Stover represents Vance Williams (Plaintiff); Special Assistant United States Attorney Gerald Hill represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 5. After reviewing the administrative record and briefs filed by the parties, the court **DENIES** Plaintiff's Motion for Summary Judgment, and directs entry of judgment for Defendant.

JURISDICTION

Plaintiff protectively filed for disability benefits (DIB) and Supplemental Security Income (SSI) on February 9, 2007. (Tr. 137.) He alleged disability due to leg and back pain, hypertension, and kidney problems, with an onset date of September 16, 2005. (Tr. 136, 141.) His claim was denied initially and on reconsideration.

1 Plaintiff requested a hearing before an administrative law judge
2 (ALJ), which was held on October 30, 2008, before ALJ R. J. Payne.
3 (Tr.13-67.) Plaintiff, who was represented by counsel, and medical
4 expert Darius Ghazi, M.D., testified. The ALJ denied benefits on
5 November 24, 2008, and the Appeals Council denied review. (Tr. 71-
6 83, 1-5.) The instant matter is before this court pursuant to 42
7 U.S.C. § 405(g).

8 STANDARD OF REVIEW

9 In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001), the
10 court set out the standard of review:

11 A district court's order upholding the Commissioner's
12 denial of benefits is reviewed *de novo*. *Harman v. Apfel*,
13 211 F.3d 1172, 1174 (9th Cir. 2000). The decision of the
14 Commissioner may be reversed only if it is not supported
15 by substantial evidence or if it is based on legal error.
16 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999).
17 Substantial evidence is defined as being more than a mere
18 scintilla, but less than a preponderance. *Id.* at 1098.
19 Put another way, substantial evidence is such relevant
20 evidence as a reasonable mind might accept as adequate to
21 support a conclusion. *Richardson v. Perales*, 402 U.S.
22 389, 401 (1971). If the evidence is susceptible to more
23 than one rational interpretation, the court may not
24 substitute its judgment for that of the Commissioner.
25 *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of*
26 *Social Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999).

27 The ALJ is responsible for determining credibility,
28 resolving conflicts in medical testimony, and resolving
ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th
Cir. 1995). The ALJ's determinations of law are reviewed
de novo, although deference is owed to a reasonable
construction of the applicable statutes. *McNatt v. Apfel*,
201 F.3d 1084, 1087 (9th Cir. 2000).

It is the role of the trier of fact, not this court, to resolve
conflicts in evidence. *Richardson*, 402 U.S. at 400. If evidence
supports more than one rational interpretation, the court may not
substitute its judgment for that of the Commissioner. *Tackett*, 180
F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984).

1 Nevertheless, a decision supported by substantial evidence will
2 still be set aside if the proper legal standards were not applied in
3 weighing the evidence and making the decision. *Browner v. Secretary*
4 *of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988). If
5 there is substantial evidence to support the administrative
6 findings, or if there is conflicting evidence that will support a
7 finding of either disability or non-disability, the finding of the
8 Commissioner is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-
9 1230 (9th Cir. 1987).

10 SEQUENTIAL PROCESS

11 The Commissioner has established a five-step sequential
12 evaluation process for determining whether a person is disabled. 20
13 C.F.R. §§ 404.1520(a), 416.920(a); see *Bowen v. Yuckert*, 482 U.S.
14 137, 140-42 (1987). In steps one through four, the burden of proof
15 rests upon the claimant to establish a prima facie case of
16 entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d
17 920, 921 (9th Cir. 1971). This burden is met once a claimant
18 establishes that a physical or mental impairment prevents her from
19 engaging in her previous occupation. 20 C.F.R. §§ 404.1520(a),
20 416.920(a). If a claimant cannot do her past relevant work, the ALJ
21 proceeds to step five, and the burden shifts to the Commissioner to
22 show that (1) the claimant can make an adjustment to other work; and
23 (2) specific jobs exist in the national economy which claimant can
24 perform. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); *Kail v.*
25 *Heckler*, 722 F.2d 1496, 1497-98 (9th Cir. 1984).

26 STATEMENT OF THE CASE

27 The facts of the case are set forth in detail in the transcript
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1 of proceedings, and are briefly summarized here. At the time of the
2 hearing, Plaintiff was 37 years old with an 11th grade education and
3 high school equivalency degree. (Tr. 37, 43.) Plaintiff reported
4 past work experience as a utilities system specialist in the
5 military, an apprentice plumber, a truck driver, and a cable
6 installation supervisor. (Tr. 43-45, 167.) He testified his back
7 pain and anger problem prevented him from working. (Tr. 48, 53.)
8 In his appeal of the initial determination, he indicated increased
9 pain and depression due to financial and health problems. He stated
10 back and leg pain limited his exertional abilities. (Tr. 196.)

11 ADMINISTRATIVE DECISION

12 The ALJ found Plaintiff's date of last insured for DIB purposes
13 was December 31, 2008. (Tr. 73.) At step one, he found Plaintiff
14 had not engaged in substantial gainful activity since September 16,
15 2005. At step two, he found Plaintiff had severe impairments of
16 "obesity, osteoarthritis of the spine, hypertension, history of
17 renal artery stenosis, and left leg pain." (*Id.*) He concluded the
18 medical evidence did not establish a severe impairment of the
19 cervical spine, or a severe mental health impairment and references
20 to sleep apnea and chest pain in the records did not establish a
21 medically determinable impairment. (Tr. 74-75.) At step three the
22 ALJ found Plaintiff's impairments, alone and in combination, did not
23 meet or medically equal one of the listed impairments in 20 C.F.R.,
24 Appendix 1, Subpart P, Regulations No. 4 (Listings). (Tr. 75.) At
25 step four he determined Plaintiff retained the residual functional
26 capacity (RFC) to perform a wide range of light work with the
27 following restrictions:

1 [Claimant can] lift or carry 20 pounds frequently and
2 occasionally lift or carry between 21 and 50 pounds, but
3 he can never lift or carry over 50 pounds. He can sit for
4 four hours continuously and he can sit for a total of six
5 hours in an eight hour workday. He can stand or walk for
6 two hours at a time and three hours total in an eight hour
7 workday. The claimant would require normal breaks. He
8 does not require an assistive device to ambulate. The
9 claimant has continuous use of his upper extremities and
feet. He can occasionally climb ladders, ropes, and
scaffolds, and frequently climb stairs and ramps. He can
occasionally balance, stoop, crouch, kneel, and crawl. He
has no visual or hearing limitations. The claimant should
never be exposed to unprotected heights. He can be
exposed to moving machinery and heavy industrial
vibrations frequently. He can occasionally be exposed to
extreme cold and heat.

10 (Tr. 75.) In the RFC findings, the ALJ determined Plaintiff's
11 subjective statements regarding the intensity of symptoms and
12 limitations were not credible to the extent they were inconsistent
13 with the final RFC determination. (Tr. 77.) At step four, he
14 determined Plaintiff could no longer perform his past relevant work.
15 Proceeding to step five, using the Grids as a framework, the ALJ
16 found Plaintiff's physical limitations had little or no effect on
17 the occupational base of unskilled light work; therefore, Plaintiff
18 was not under a "disability" as defined by the Social Security Act
19 at any time through the date of his decision. (Tr. 83.)

20 ISSUES

21 The question is whether the ALJ's decision is supported by
22 substantial evidence and free of legal error. Plaintiff argues the
23 record does not support the ALJ's decision. Specifically, he argues
24 the ALJ erred when he: (1) disregarded medical opinions; (2) found
25 no severe mental impairments; (3) assessed Plaintiff's RFC; and (4)
26 assessed Plaintiff's credibility. ECF No. 13 at 10. Defendant
27 responds the ALJ's decision is supported by substantial evidence and
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1 free of legal error. ECF No. 15.

2 **DISCUSSION**

3 **A. Credibility**

4 Plaintiff asserts generally that the ALJ's credibility
5 determination "is not based on any convincing evidence." ECF No. 13
6 at 14. He appears to argue his allegations of complete disability
7 should be credited because medical evidence shows physical
8 abnormalities, psychological testing was deemed valid, and he was
9 given a disability parking permit by his treating doctor. *Id.*
10 However, an ALJ cannot be required to believe every allegation of
11 disabling pain and limitations, even when medical evidence
12 establishes an impairment is reasonably expected to produce *some* of
13 the claimed disabling symptoms. *Molina v. Astrue*, 674 F.3d 1104,
14 (9th Cir. 2012)(*citing Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir.
15 1989)("many medical conditions produce pain not severe enough to
16 preclude gainful employment").

17 Review of the ALJ's credibility findings indicates he did not
18 reject Plaintiff's statements entirely. (Tr. 75-80.) Rather, he
19 found limitations that exceeded the final RFC assessment were not
20 credible. Further, consistent with the standard cited by Plaintiff,
21 ECF No. 13 at 13-14, in addition to medical evidence, the ALJ
22 considered the entire record, discussed factors relevant to
23 credibility assessment and gave specific, detailed, "clear and
24 convincing" reasons for discounting Plaintiff's subjective
25 complaints of disabling symptoms. *See Lingenfelter v. Astrue*, 504
26 F.3d 1028, 1035-36 (9th Cir. 2007); *Burch v. Barnhart*, 400 F.3d 676,
27 681 (9th Cir. 2005); *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th

1 Cir. 2008); *Thomas v. Barnhart*, 278 F.3d 947, 958-959 (9th Cir.
2 2002); *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996); *Social*
3 *Security Ruling (SSR)* 96-7p (medical evidence is a relevant factor
4 to consider in credibility assessment). His specific credibility
5 findings are supported by substantial evidence in the record and
6 thus satisfy the legal standard required in these proceedings. Thus,
7 they will not be disturbed. *Thomas*, 278 F.3d at 959; *Fair*, 885 F.2d
8 at 604 ("credibility determinations are the province of the ALJ").

9 Here, referencing specific medical evidence in the record, the
10 ALJ found medical evidence did not support Plaintiff's allegations
11 of disabling symptoms. Explaining this conclusion, he reasoned that
12 Plaintiff's hypertension was under control; medical providers could
13 find no etiology for his claimed left leg pain; vascular studies
14 were negative; and radiology studies revealed no more than mild
15 changes in his lumbar spine. Further, he specifically noted
16 examining physicians reported that their physical examinations did
17 not evidence the degree of pain or "extreme limitations" asserted by
18 Plaintiff. (Tr. 78, 345-47, 466.) These medical source opinions,
19 based on physical examination, are legally sufficient to discount
20 Plaintiff's complaints. *Burch*, 400 F.3d at 681. It is noted on
21 review that the medical expert also testified medical evidence did
22 not show more than a mild degenerative change in Plaintiff's back or
23 establish a diagnosis to explain Plaintiff's "vague issues" with his
24 leg. (Tr. 17, 33.)

25 In addition to a lack of objective medical evidence to support
26 claims of disabling symptoms, the ALJ gave other legally sufficient
27 reasons for his credibility findings, including examining physician
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1 observations that are inconsistent with severity claimed; the
2 orthopedic surgeon's refusal to see Plaintiff due to a lack of
3 substantial findings on radiology reports; clinic notes from
4 treating and examining physicians suggesting Plaintiff's complaints
5 were disproportional to pain actually experienced; and
6 inconsistencies between Plaintiff's disability report and testimony
7 regarding activities of daily living. (Tr. 78-80.) The ALJ properly
8 referenced medical provider opinions found in the record that (1)
9 Plaintiff's obesity compounded back and leg pain; (2) Plaintiff
10 refused to attend physical therapy; and (3) Plaintiff failed to
11 follow recommendations to stop using tobacco, to exercise, and to
12 lose weight. (See, e.g., Tr. 79, 460-61, 554.) Plaintiff's failure
13 to follow his physician's recommendations is a valid and specific
14 reason for discounting a claimant's allegations of severe symptoms.
15 *Tommasetti*, 533 F.3d at 1039 (claimant's refusal to follow
16 prescribed treatment supports adverse credibility finding); see also
17 *Osenbrock v. Astrue*, 240 F.3d 1157 1165-66 (9th Cir. 2001) (evidence
18 of claimant's physical de-conditioning, self-limitation and lack of
19 motivation appropriate to consider in credibility determination).
20 Plaintiff identifies no evidence to contradict these specific, clear
21 and convincing findings.

22 Regarding mental health issues, the ALJ found Plaintiff's
23 statements were insufficient to establish a mental impairment.
24 Plaintiff's argument that psychological testing was deemed valid,
25 and the examining psychologist did not believe Plaintiff was
26 exaggerating his symptoms is not supported by the record. ECF No.
27 13 at 14. Mental health assessment specialist Ashlie Hagen, MS,
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1 noted Plaintiff's responses on objective test scales indicate an
2 "over-endorsement" of responses and great exaggeration of problems
3 to create an "impression of severe emotional problems." (Tr. 623.)
4 Her opinions were endorsed by Scott Mabee, Ph.D.¹ (Tr. 625.) In
5 her narrative report, Ms. Hagen specifically advised results of the
6 objective testing "be viewed with caution." *Id.*

7 The ALJ's credibility assessment is supported by clear,
8 convincing and specific reasons and substantial evidence. The ALJ
9 did not err in the weight given Plaintiff's subjective complaints.

10 **B. Step Two**

11 Plaintiff argues the ALJ erred when he found no severe mental
12 impairment. He contends the depressive disorder identified by Ms.

13 ¹ As mental health counselor, Ms. Hagen is considered an
14 "other" medical source who is not qualified to diagnose a mental
15 impairment. However her opinions regarding limitations caused by
16 mental disorders must be considered by the ALJ and may be rejected
17 only with specific reasons, "germane" to Ms. Hagen. 20 C.F.R. §§
18 404.1513(d), 416.913(d). Even assuming Dr. Mabee's endorsement of
19 Ms. Hagen's evaluation established medically determinable mental
20 health disorders, the ALJ legitimately gave moderate and marked
21 limitations assessed by Ms. Hagen (in her form report) little weight
22 because they are based on Plaintiff's unreliable self-report and
23 unsupported by clinical testing. (Tr. 74.) These are legally
24 sufficient reasons to reject an examining source opinion.
25 *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001)(physician's
26 reliance on discounted self-report supports rejection of his medical
27 conclusion).
28

1 Hagen should be considered a severe mental impairment because the
2 record reflects his complaints of depression and treatment with
3 anti-depressants. ECF No. 13 at 16-17.

4 Plaintiff bears the burden of establishing a severe impairment
5 at step two. *Edlund*, 253 F.3d 1152, 1159-60 (9th Cir. 2001.) To
6 satisfy step two's requirement of a severe impairment, the claimant
7 must prove the existence of a physical or mental impairment by
8 providing medical evidence consisting of signs, symptoms, and
9 laboratory findings. The impairment must have lasted or be expected
10 to last for a continuous period of at least 12 months. 20 C.F.R. §§
11 404.1508 and .1509, 416.909 and .909 (durational requirement). The
12 ALJ found Plaintiff's self reported depression did not meet the
13 duration requirement and gave specific reasons for rejecting the
14 limitations assessed in the Hagen/Mabee evaluation. His reasoning
15 is supported by substantial evidence.

16 As discussed above, the record confirms Plaintiff's self-
17 reported symptoms during his psychological evaluation were
18 acknowledged by Ms. Hagen as not entirely reliable. As noted by
19 the ALJ, the depressive disorder was deemed mild, treatment notes
20 indicate symptoms were improving with medication, and there is no
21 evidence, other than Plaintiff's unreliable statements, that
22 depression caused more than mild limitations in Plaintiff's
23 functioning. (Tr. 74.) The ALJ properly supported the step two
24 finding of no severe mental impairment by referencing objective test
25 results showing no cognitive limitations and no evidence of mental
26 impairment on the Trails Making tests. (*Id.*) Indeed, Ms. Hagen
27 conceded she based her assessment on Plaintiff's self report, which

1 she deemed "greatly exaggerated" based on the test results.
2 Plaintiff points to no evidence (other than his own subjective
3 complaints) that contradicts the ALJ's finding that claimed mental
4 problems caused no more than a minimal impact on Plaintiff's ability
5 to work.²

6 Plaintiff's reliance on Dr. Mabee's Global Assessment
7 Functioning (GAF) score is misplaced, as it is insufficient to
8 establish a severe impairment. (Tr. 624.) The GAF score is used
9 to determine an individual's need for treatment. *Vargas v. Lambert*,
10 159 F.3d 1161, 1164 n.2 (9th Cir. 1998). Here, it is, at best, a
11 situational assessment based on one interview and over-reported
12 subjective symptoms. The Commissioner has explicitly disavowed any
13 use of the GAF scores as an indicator of disability. 65 Fed. Reg.
14 50746-01, 50765 (August 21, 2000). Evidence relied upon by Plaintiff
15 does not meet the threshold burden at step two to provide objective
16 findings of a medically determinable impairment that meets the
17 durational requirement. The ALJ did not err in his step two
18 findings. 20 C.F.R. §§ 404.1508, 416.908 (claimant's own statement
19 of symptoms alone does not meet step two burden).

20 **C. Residual Functional Capacity Assessment**

21 _____
22 ² Plaintiff appears to rely on evidence of post-hearing
23 examinations, the reports of which are dated February 2009 and were
24 submitted to the Appeals Council. (Tr. 688-710.) The court has
25 considered these records. However, because the evidence does not
26 relate to the period at issue, these records are not material to the
27 determination of disability. *Brewes v. Commissioner of Social Sec.*
28 *Admin.*, 682 F.3d 1157 (9th Cir. 2012).

1 Plaintiff contends the ALJ disregarded physical and mental
2 limitations which affect his ability to perform light level work.
3 As evidence to support his argument, he relies on opinions from the
4 Hagen/Mabee evaluation and imaging reports showing abnormalities in
5 his lumbar spine. ECF No. 13 at 13. As discussed above, the ALJ
6 thoroughly discussed the psychological evaluation endorsed by Dr.
7 Mabee and gave legally sufficient reasons for discounting the opined
8 mental limitations because they were not consistent with Ms. Hagan's
9 narrative and clinical testing results indicated Plaintiff over
10 endorsed his symptoms. (Tr. 74.)

11 Plaintiff's assertion that evidence from treating physician,
12 Rolf Panke, D.O., supports a finding of disability is unfounded.
13 ECF No. 13 at 14-15. Specifically, Plaintiff relies on a parking
14 permit application completed by Dr. Panke in October 2007 in which
15 the doctor represented Plaintiff could not walk more than 200 feet
16 without resting. *Id.* The record shows the ALJ specifically
17 discussed in detail the parking permit application and gave little
18 weight to the limitation in walking. (Tr. 79.) His reasoning that
19 this extreme limitation is not supported by imaging reports and the
20 detailed findings on examination by orthopedic specialist G.W.
21 Bagby, M.D., is sufficiently specific and legitimate to reject Dr.
22 Panke's opinion.³ (Tr. 78-79, see Dr. Bagby's report at Tr. 345-50.)
23 It is also noted that in the parking permit application, Dr. Panke

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25 ³ In evaluating medical opinions, more weight is given to a
26 medical specialist's opinion on issues related to his area of
27 speciality than to a medical source who is not a specialist. 20
28 C.F.R. §§ 404.1527 (d)(5), 416.927(d)(5).

1 certified the walking limitation was temporary and would last six
2 months. (Tr. 511.) Thus, even if credited, this limitation would
3 not meet the duration requirement and is not sufficient to establish
4 a disability under the Social Security Act. Plaintiff fails to
5 identify objective medical evidence to support his assertion that
6 his physical limitations are totally disabling.

7 The final determination regarding a claimant's ability to
8 perform basic work is the sole responsibility of the Commissioner.
9 20 C.F.R. § 416.946(c); SSR 96-5p. It is not a "medical issue"
10 under the Regulations; but it must include all limitations supported
11 by substantial evidence in the record that is "not depend[ent] on
12 Plaintiff's subjective complaints." 20 C.F.R. § 416.94; *Bayliss v*
13 *Barnhart*, 427 F.3d 1211, 1217 (9th Cir. 2005); SSR 96-5p. *De novo*
14 review shows the ALJ's final RFC determination meets those
15 requirements. Where, as here, the ALJ's determination is a rational
16 interpretation of the entire record, the court may not substitute
17 its judgment for that of the Commissioner. *Tackett*, 180 F.3d at
18 1097.

19 CONCLUSION

20 The ALJ's determination of non-disability is based on
21 substantial evidence and free of legal error. Accordingly,

22 IT IS ORDERED:

23 1. Plaintiff's Motion for Summary Judgment, **ECF No. 12**, is
24 **DENIED**.

25 2. Defendant's Motion for Summary Judgment, **ECF No. 14**, is
26 **GRANTED**.

27 The District Court Executive is directed to file this Order and
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1 provide a copy to counsel for Plaintiff and Defendant. Judgment
2 shall be entered for Defendant, and the file shall be **CLOSED**.

3 DATED October 31, 2012.

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5 S/ CYNTHIA IMBROGNO
6 UNITED STATES MAGISTRATE JUDGE
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